

May 2004

MJI Publications Updates

Adoption Proceedings Benchbook

**Child Protective Proceedings
Benchbook (Revised Edition)**

**Criminal Procedure Monograph 6—
Pretrial Motions (Revised Edition)**

**Juvenile Justice Benchbook (Revised
Edition)**

Juvenile Traffic Benchbook

**Managing a Trial Under the Controlled
Substances Act**

**Traffic Benchbook—Revised Edition,
Volume 1**

**Traffic Benchbook—Revised Edition,
Volume 2**

Update: Adoption Proceedings Benchbook

CHAPTER 3

Identifying the Father

3.10 Putative Father Hearing — Child Protective Proceedings

Insert the following text on the bottom of page 120 and delete the case summary of *In re Montgomery* on pages 120-121:

The Supreme Court held that the Michigan Court Rules do not permit a biological father to participate in a child protective proceeding where a legal father exists. *In re KH*, ___ Mich ___, ___ (2004), overruling *In re Montgomery*, 185 Mich App 341 (1990). In *KH*, the FIA filed a petition to terminate the parental rights of Tina and Richard Jefferson to four children. During a bench trial, the parties testified that Tina and Richard were legally married during each child's conception and birth and were still married at the time of trial. Based on DNA test results admitted at trial, the referee determined that another man, Lagrone, was the biological father of three of the children. *KH, supra* at ___. Lagrone then filed a motion seeking a ruling that Richard Jefferson was not the father of the three children. Tina objected to the motion, arguing that as a putative father Lagrone did not have standing to establish paternity in the child protective proceeding. The trial court granted Lagrone's motion to establish paternity. The children's lawyer-guardian ad litem appealed. *KH, supra* at ___.

*Now MCR 3.921(C). Although *KH* was decided under the court rules in effect prior to May 1, 2003, the Court notes that the analysis and outcome of the case are the same under the current court rules. *KH, supra* at ___, n 1.

*The definition of “child born out of wedlock” was incorporated into the definition of “father” in MCR 3.903(A)(7)(a).

MCR 5.921(D)* permitted a putative father to be identified and given notice of court hearings only where the minor child had no father. Therefore, if a father already existed pursuant to MCR 5.903(A)(4), a putative father could not be identified or given notice. *KH, supra* at ____.

Because Tina and Richard were legally married at the time of each minor’s conception and birth, the children had a legal father and no other man could be identified as a putative father unless the minors were determined to be “born out of wedlock.” MCR 5.903(A)(1)* defined a “child born out of wedlock” as a child “conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.” *KH, supra* at ____.

Lagrone argued that the three children were judicially determined to be “born out of wedlock” when the referee determined that Lagrone was the biological father of the children. The Court looked to the Paternity Act as the legislatively provided mechanism for establishing paternity. The Court concluded:

“[A] determination that a child is born out of wedlock must be made by the court before a biological father may be identified in a child protective proceeding.

“Under either version of the court rule, MCR 5.921(D) or MCR 3.921(C), a prior out-of-wedlock determination does not confer *any type* of standing on a putative father. Rather, the rules give the trial court the discretion to provide notice to a putative father, and permit him to establish that he is the biological father by a preponderance of the evidence. Once proved, the biological father is provided fourteen days to establish a legally recognized paternal relationship.

“*Nothing in the prior or amended court rules permits a paternity determination to be made in the midst of a child protective proceeding.* Rather, once a putative father is identified in accordance with the court rules, the impetus is clearly placed on the putative father to secure his legal relationship with the child as provided by law. If the legal relationship is not established, a biological father may not be named as a respondent on a

termination petition, the genetic relationship notwithstanding.”
[Emphasis added.] *KH, supra* at ____.

In *KH*, the record contained evidence that the presumption of legitimacy had been rebutted. During the course of the proceedings, Tina and Richard testified that Richard Jefferson was not the children’s father. Richard also testified that he did not wish to participate in the proceedings, which, the Court concluded, could reasonably be construed as an indication that Richard was prepared to renounce the benefit afforded to him by the presumption of legitimacy and to not claim the children as his own. *KH, supra* at ____.

However, since the trial court did not make a finding on whether the presumption of legitimacy was rebutted, the Court remanded to the trial court for such a determination. The Court concluded:

“If Mr. Lagrone had been . . . identified[as the putative father], and elected to establish paternity as permitted by MCR 5.921(D)(2)(b), the out-of-wedlock determination made in the child protective proceeding could serve as the prior determination needed to pursue a claim under the Paternity Act. *Girard* [*v Wagenmaker*, 437 Mich 231 (1991)].

“Accordingly, this case is remanded to the trial court for such a determination. If the court finds that the presumption of legitimacy was rebutted by clear and convincing evidence from either parent that the children are not the issue of the marriage, the court may take further action in accordance with MCR 5.921(D).” *KH, supra* at ____.

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.2 Venue

Effective April 20, 2004, 2004 PA 68 amended MCL 710.23d. In the last paragraph on page 125 and continuing on page 126, replace the sentence beginning, “If a temporary placement” with the following text:

If a temporary placement of the child has already occurred, venue is proper in the county where the child’s parent, the child’s guardian, or the prospective adoptive parent resides, or where the child is found. MCL 710.24(1) and 710.23d(2).

CHAPTER 4

Jurisdiction, Venue, and Petition Requirements

4.6 Petition Requirements

D. Filing and Notice Requirements

Effective April 20, 2004, 2004 PA 68 amended MCL 710.23d. On page 140, in the first paragraph of this subsection replace the second sentence with the following text:

If a temporary placement of the child has already occurred, venue is proper in the county where the child's parent, the child's guardian, or the prospective adoptive parent resides, or where the child is found. MCL 710.24(1) and 710.23d(2).

CHAPTER 5

Temporary Placements, Investigation Reports, and the Safe Delivery of Newborns

5.1 Temporary Placements

C. Procedural and Documentary Requirements

Effective April 20, 2004, 2004 PA 68 amended MCL 710.23d to eliminate the requirement that a child who is temporarily placed must be placed with a Michigan resident. On page 156, replace the first paragraph in subsection (C) with the following:

A prospective adoptive parent with whom a child is temporarily placed must have had a preplacement assessment completed within one year prior to the date of transfer with a finding that the prospective adoptive parent is suitable to be a parent of an adoptee.* MCL 710.23d(1)(a).

*See Section 5.2 for information on preplacement assessments.

1. Statement of Transfer by Parent, Guardian, or Representative of Child Placing Agency

MCL 710.23d(1)(c)(ii) was also amended by 2004 PA 68. In the middle of page 156, delete the phrase “who is a Michigan resident” from the end of the paragraph beginning (ii).

2. Statement of Transfer by the Prospective Adoptive Parent

On page 157, replace the last sentence of the first paragraph in this subsection and the quotation that follows with the following language:

Pursuant to MCL 710.23d(1)(d)(i)–(iv), the statement must also contain an attestation by the adoptive parent to all of the following:

“(i) That the prospective adoptive parent understands that the temporary placement will not become a formal placement until the parents consent or release their parental rights and the court orders the termination of parental rights and approves the placement and that the prospective adoptive parent must relinquish custody of the child within 24 hours after being served with an order under [MCL 710.23e(2)].

“(ii) That, if the prospective adoptive parent is a Michigan resident, the prospective adoptive parent agrees to reside with the child in Michigan until formal placement occurs.

“(iii) That the prospective adoptive parent agrees to obtain approval in compliance with the interstate compact on the placement of children, 1984 PA 114, MCL 3.711 to 3.717, before the child is sent, brought, or caused to be sent or brought into a receiving state as that term is defined in section 1 of the interstate compact on the placement of children, 1984 PA 114, MCL 3.711.*

“(iv) That the prospective adoptive parent submits to this state’s jurisdiction.”

*See Section 4.4 for information on the Interstate Compact on the Placement of Children.

3. Transfer Report

On the bottom of page 157, replace the quoted paragraph with the following quote:

“Not later than 2 days, excluding weekends and holidays, after a transfer of physical custody of a child in accordance with [MCL 710.23d(1)], the adoption attorney or child placing agency who assists with the temporary placement or the child placing agency that makes the temporary placement shall submit to the court in the county in which the child’s parent or guardian or the prospective adoptive parent resides, or in which the child is found, a report that contains all of the following:

5. Disposition Report

At the top of page 159, replace the margin note with the following:

Effective April 20, 2004, 2004 PA 68 amended MCL 710.23d(2). The court that received the report in subsection (2) is the court located in the county where the child’s parent, the child’s guardian, or the prospective adoptive parent resides, or where the child is found. MCL 710.24(1) and 710.23d(2).

CHAPTER 5

Temporary Placements, Investigation Reports, and the Safe Delivery of Newborns

5.4 Resolving Custody Disputes After a Temporary Placement

Effective April 20, 2004, 2004 PA 68 amended MCL 710.23d(2). Replace the first sentence of the first margin note on page 167 with the following text:

The report of transfer of physical custody is filed in the court located in the county where the child's parent, the child's guardian, or the prospective adoptive parent resides, or where the child is found. MCL 710.24(1) and 710.23d(2).

A. Petition for Disposition or Revocation of a Temporary Placement

1. Parent or Guardian

Effective April 20, 2004, 2004 PA 68 amended MCL 710.23d(2). On page 167, replace the second sentence of the second margin note with the following text:

It is filed in the court located in the county where the child's parent, the child's guardian, or the prospective adoptive parent resides, or where the child is found. MCL 710.24(1) and 710.23d(2).

CHAPTER 7

Rehearings, Appeals, Rescissions, and Dissolutions

7.4 Appeals to the Court of Appeals

B. Time Requirements

Effective May 1, 2004 MCR 7.204(A)(1) was amended. On the bottom of page 227 and top of page 228, replace the quotation of MCR 7.204(A)(1) with the following quote:

“(1) An appeal of right in a civil action must be taken within

(a) 21 days after entry of the judgment or order appealed from;

(b) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period;

(c) 14 days after entry of an order of the family division of the circuit court terminating parental rights, or entry of an order denying a motion for new trial, rehearing, reconsideration, or other postjudgment relief from an order terminating parental rights, if the motion was filed within the initial 14-day appeal period or within further time the trial court may have allowed during that period; or

(d) another time provided by law.

“If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within 14 days after the final judgment or order, the 14-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within 14 days after the decision on the motion.”

May 2004

Update: Child Protective Proceedings Benchbook (Revised Edition)

CHAPTER 5

Notice & Time Requirements

5.1 Service of Process in Child Protective Proceedings

Presumption of legitimacy.

On pages 124-125, delete the case summary of *In re Montgomery* and the **Note** regarding *In re KH*. In *KH*, the Michigan Supreme Court overruled *Montgomery* insofar as it held that a court may make a paternity determination during a child protective proceeding.

CHAPTER 5

Notice & Time Requirements

5.2 Establishing Paternity

Procedure for establishing paternity in a child protective proceeding.

At the bottom of page 126, insert the following case summary before the summary of the *CAW* case:

The Supreme Court held that the Michigan Court Rules do not permit a biological father to participate in a child protective proceeding where a legal father exists. *In re KH*, ___ Mich ___, ___ (2004), overruling *In re Montgomery*, 185 Mich App 341 (1990). In *KH*, the FIA filed a petition to terminate the parental rights of Tina and Richard Jefferson to four children. During a bench trial, the parties testified that Tina and Richard were legally married during each child's conception and birth and were still married at the time of trial. Based on DNA test results admitted at trial, the referee determined that another man, Lagrone, was the biological father of three of the children. *KH, supra* at ___. Lagrone then filed a motion seeking a ruling that Richard Jefferson was not the father of the three children. Tina Jefferson objected to the motion, arguing that as a putative father Lagrone did not have standing to establish paternity in a child protective proceeding. The trial court granted Lagrone's motion to establish paternity. The children's lawyer-guardian ad litem appealed. *KH, supra* at ___.

MCR 5.921(D)* permitted a putative father to be identified and given notice of court hearings only where the minor child had no father. Therefore, if a father already existed pursuant to MCR 5.903(A)(4), a putative father could not be identified or given notice. *KH, supra* at ___.

*Now MCR 3.921(C). Although *KH* was decided under the court rules in effect prior to May 1, 2003, the Court notes that the analysis and outcome of the case are the same under the current court rules. *KH, supra* at ___, n 1.

Because Tina and Richard were legally married at the time of each minor's conception and birth, the children had a legal father and no other man could be identified as a putative father unless the minors were determined to be "born out of wedlock." MCR 5.903(A)(1)* defined a "child born out of wedlock" as a child "conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage." *KH, supra* at ____.

*The definition of "child born out of wedlock" was incorporated into the definition of "father" in MCR 3.903(A)(7)(a).

Lagrone argued that the three children were judicially determined to be "born out of wedlock" when the referee determined that Lagrone was the biological father of the children. The Court looked to the Paternity Act as the legislatively provided mechanism for establishing paternity. The Court concluded:

"[A] determination that a child is born out of wedlock must be made by the court before a biological father may be identified in a child protective proceeding.

"Under either version of the court rule, MCR 5.921(D) or MCR 3.921(C), a prior out-of-wedlock determination does not confer *any type* of standing on a putative father. Rather, the rules give the trial court the discretion to provide notice to a putative father, and permit him to establish that he is the biological father by a preponderance of the evidence. Once proved, the biological father is provided fourteen days to establish a legally recognized paternal relationship.

"*Nothing in the prior or amended court rules permits a paternity determination to be made in the midst of a child protective proceeding.* Rather, once a putative father is identified in accordance with the court rules, the impetus is clearly placed on the putative father to secure his legal relationship with the child as provided by law. If the legal relationship is not established, a biological father may not be named as a respondent on a termination petition, the genetic relationship notwithstanding." [Emphasis added.] *KH, supra* at ____.

In *KH*, the record contained evidence that the presumption of legitimacy had been rebutted. During the course of the proceedings, Tina and Richard Jefferson testified that Richard was not the children's father. Richard also testified that he did not wish to participate in the proceedings, which, the Court concluded could reasonably be construed as an indication that Richard was prepared to renounce the benefit afforded to him by the presumption of legitimacy and to not claim the children as his own. *KH, supra* at _____. However, since the trial court did not make a finding on whether the presumption of legitimacy was rebutted, the Court remanded to the trial court for such a determination. The Court concluded:

“If Mr. Lagrone had been . . . identified[as a putative father], and elected to establish paternity as permitted by MCR 5.921(D)(2)(b), the out-of-wedlock determination made in the child protective proceeding could serve as the prior determination needed to pursue a claim under the Paternity Act. *Girard* [*v Wagenmaker*, 437 Mich 231 (1991)].

“Accordingly, this case is remanded to the trial court for such a determination. If the court finds that the presumption of legitimacy was rebutted by clear and convincing evidence from either parent that the children are not the issue of the marriage, the court may take further action in accordance with MCR 5.921(D).” *KH, supra* at ____.

CHAPTER 7

Preliminary Hearings

7.4 Respondents' Right to Counsel

Effective May 1, 2004, MCR 3.977(I) was amended. Beginning near the middle of page 180, replace the quote of MCR 3.977(I) with the following quote:

“(I) Respondent’s Rights Following Termination.

“(1) *Advice.* Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:

(a) The respondent is entitled to appellate review of the order.

(b) If the respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record the attorney requires to appeal.

(c) A request for the assistance of an attorney must be made within 14 days after notice of the order is given or an order is entered denying a timely filed postjudgment motion. The court must then give a form to the respondent with the instructions (to be repeated on the form) that if the respondent desires the appointment of an attorney, the form must be returned to the court within the required period (to be stated on the form).

(d) The respondent has the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent’s name and address as provided in MCL 710.27.

“(2) *Appointment of Attorney.*

(a) If a request is timely filed and the court finds that the respondent is financially unable to provide an attorney, the court shall appoint an attorney within 14 days after the respondent’s request is filed. The chief judge of the court shall bear primary responsibility for ensuring that the appointment is made within the deadline stated in this rule.

(b) In a case involving the termination of parental rights, the order described in (I)(2) and (3) must be entered on a

form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Order Appointing Counsel," and the court must immediately send to the Court of Appeals a copy of the Claim of Appeal and Order Appointing Counsel, a copy of the judgment or order being appealed, and a copy of the complete register of actions in the case. The court must also file in the Court of Appeals proof of having made service of the Claim of Appeal and Order Appointing Counsel on the respondent(s), appointed counsel for the respondent(s), the court reporter(s)/recorder(s), petitioner, the prosecuting attorney, the lawyer-guardian ad litem for the child(ren) under MCL 712A.13a(1)(f), and the guardian ad litem or attorney (if any) for the child(ren). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

"(3) *Transcripts*. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense."

The relevant SCAO forms have been amended to conform to the amended court rule. See SCAO Form JC 44 and JC 84. For further information, see SCAO Administrative Memorandum 2004-02, April 1, 2004.

CHAPTER 18

Hearings on Termination of Parental Rights

18.13 Required Advice of Rights

Effective May 1, 2004, MCR 3.977(I) was amended. Beginning near the bottom of page 389, replace the quote of MCR 3.977(I) with the following quote:

“(I) Respondent’s Rights Following Termination.

“(1) *Advice.* Immediately after entry of an order terminating parental rights, the court shall advise the respondent parent orally or in writing that:

- (a) The respondent is entitled to appellate review of the order.
- (b) If the respondent is financially unable to provide an attorney to perfect an appeal, the court will appoint an attorney and furnish the attorney with the portions of the transcript and record the attorney requires to appeal.
- (c) A request for the assistance of an attorney must be made within 14 days after notice of the order is given or an order is entered denying a timely filed postjudgment motion. The court must then give a form to the respondent with the instructions (to be repeated on the form) that if the respondent desires the appointment of an attorney, the form must be returned to the court within the required period (to be stated on the form).
- (d) The respondent has the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent’s name and address as provided in MCL 710.27.

“(2) *Appointment of Attorney.*

- (a) If a request is timely filed and the court finds that the respondent is financially unable to provide an attorney, the court shall appoint an attorney within 14 days after the respondent’s request is filed. The chief judge of the court shall bear primary responsibility for ensuring that the appointment is made within the deadline stated in this rule.
- (b) In a case involving the termination of parental rights, the order described in (I)(2) and (3) must be entered on a

form approved by the State Court Administrator's Office, entitled "Claim of Appeal and Order Appointing Counsel," and the court must immediately send to the Court of Appeals a copy of the Claim of Appeal and Order Appointing Counsel, a copy of the judgment or order being appealed, and a copy of the complete register of actions in the case. The court must also file in the Court of Appeals proof of having made service of the Claim of Appeal and Order Appointing Counsel on the respondent(s), appointed counsel for the respondent(s), the court reporter(s)/recorder(s), petitioner, the prosecuting attorney, the lawyer-guardian ad litem for the child(ren) under MCL 712A.13a(1)(f), and the guardian ad litem or attorney (if any) for the child(ren). Entry of the order by the trial court pursuant to this subrule constitutes a timely filed claim of appeal for the purposes of MCR 7.204.

"(3) *Transcripts*. If the court finds that the respondent is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense."

The relevant SCAO forms have been amended to conform to the amended court rule. See SCAO Form JC 44 and JC 84. For further information, see SCAO Administrative Memorandum 2004-02, April 1, 2004.

CHAPTER 21

Appeals

21.4 Filing Requirements

Effective May 1, 2004, MCR 7.204(A)(1) was amended. Replace the quotation of MCR 7.204(A)(1) near the middle of page 451, beginning with the following quote:

“(1) An appeal of right in a civil action must be taken within

(a) 21 days after entry of the judgment or order appealed from;

(b) 21 days after the entry of an order denying a motion for new trial, a motion for rehearing or reconsideration, or a motion for other postjudgment relief, if the motion was filed within the initial 21-day appeal period or within further time the trial court may have allowed during that 21-day period;

(c) 14 days after entry of an order of the family division of the circuit court terminating parental rights, or entry of an order denying a motion for new trial, rehearing, reconsideration, or other postjudgment relief from an order terminating parental rights, if the motion was filed within the initial 14-day appeal period or within further time the trial court may have allowed during that period; or

(d) another time provided by law.

“If a party in a civil action is entitled to the appointment of an attorney and requests the appointment within 14 days after the final judgment or order, the 14-day period for the taking of an appeal or the filing of a postjudgment motion begins to run from the entry of an order appointing or denying the appointment of an attorney. If a timely postjudgment motion is filed before a request for appellate counsel, the party may request counsel within 14 days after the decision on the motion.”

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.19 Motion to Suppress Confession for Violation of Sixth Amendment Right to Counsel

Insert the following case summary near the top of page 39, immediately before the last paragraph of Section 6.19:

A defendant's Sixth Amendment right to counsel was violated when the defendant's former friend and neighbor (Heintzelman) was permitted to testify at the defendant's trial about inculpatory statements the defendant made during a late-night conversation. Heintzelman, a reserve deputy in full uniform at the time of the conversation, had with the defendant in his maximum-security jail cell. *People v McRae*, ___ Mich ___, ___ (2004).

The prosecution argued that Heintzelman's testimony was admissible because he was not acting in his official capacity at the time he spoke with the defendant. *McRae, supra*, ___ Mich at ___. The Michigan Supreme Court disagreed and found that Heintzelman's status was indisputably that of a state actor because, in addition to the fact that Heintzelman was in full uniform when he visited the defendant, the late-night visit to the defendant's maximum-security cell was facilitated only because of Heintzelman's status as a reserve deputy. *McRae, supra*, ___ Mich at ___. According to the Court:

“[I]t was only by virtue of his status as a reserve deputy that Heintzelman was granted direct access to defendant's maximum-security cell, a restricted area where only governmental agents are normally allowed to tread. Further, this access was granted late at night, a time when ordinary citizens are prohibited from visiting inmates [footnote omitted].” *McRae, supra*, ___ Mich at ___.

The prosecution also argued that Heintzelman's testimony was properly admitted regardless of his status because the defendant had specifically requested to speak with Heintzelman and thus, the state had not impermissibly

initiated contact with the defendant following invocation of his right to counsel. *McRae, supra*, ___ Mich at ___. The Court disagreed and noted that when the defendant asked to speak with Heintzelman he was unaware that Heintzelman had joined the ranks of law enforcement. *McRae, supra*, ___ Mich at ___. The prosecution argued that the content of the conversation was still properly admitted under *Edwards v Arizona*, 451 US 477, 484 (1981), because the defendant initiated the dialogue and spoke to Heintzelman even after seeing he was a reserve deputy. *McRae, supra*, ___ Mich at ___.

The *McRae* Court disagreed and explained that, even after *Edwards*, “[t]he initiation of a conversation related to the investigation, standing alone, is insufficient to establish a waiver of the previously asserted right to counsel.” *McRae, supra*, ___ Mich at ___. In *McRae*, not only was the defendant’s request to speak with Heintzelman the only evidence in support of the testimony’s admissibility under *Edwards*, the Court pointed out that the record evidence established that the defendant did not wish to speak about the crime and did so only after repeated efforts by Heintzelman to direct the conversation. *McRae, supra*, ___ Mich at ___. The Court stated:

“Pursuant to [*Oregon v*] *Bradshaw* [, 462 US 1039 (1983)], the defendant must initiate communication concerning the investigation in order to avoid running afoul of the rule articulated in *Edwards* [footnote omitted].

* * *

“Even solely reviewing Heintzelman’s testimony regarding his conversation with defendant, there is no proof evincing a desire on the part of defendant to pursue a discussion relating directly or indirectly to the investigation. Defendant merely initiated a social visit with his old friend and neighbor. It was Heintzelman, not defendant, who initiated all questioning relating to the investigation and charges against defendant for the murder of Randy Laufer.” *McRae, supra*, ___ Mich at ___.

Part 2—Individual Motions

6.23 Motion to Dismiss Because of Double Jeopardy— Successive Prosecutions for the Same Offense

1. The “Same-Elements” Test Determines Whether Double Jeopardy Protection Is Implicated

Revise the subheading as indicated and replace the text on pages 51–52 with the following case summary:

The Michigan Supreme Court readopted the “same-elements” test to determine whether the prohibition against double jeopardy is violated when multiple charges are brought against a defendant for conduct related to a single criminal transaction. *People v Nutt*, ___ Mich ___, ___ (2004). In *Nutt*, the Court overruled its decision in *People v White*, 390 Mich 245 (1973), where the Court disapproved of the “same-elements” test in favor of the “same transaction” test as the means of resolving double jeopardy issues. The “same transaction” test generally prohibited serial prosecutions of a defendant for entirely different crimes arising from a single criminal episode or “transaction.” *Nutt, supra*, ___ Mich at ___. Until the *White* decision in 1973, Michigan courts had interpreted the prohibition against double jeopardy as precluding multiple prosecutions of a defendant for crimes involving identical elements. *Nutt, supra*, ___ Mich at ___.

In *Nutt*, the defendant pleaded guilty in a Lapeer County Court of one count of second-degree home invasion. *Nutt, supra*, ___ Mich at ___. Later, the defendant was bound over for trial in Oakland County on the charge of receiving and concealing a stolen firearm—the firearm was obtained in the defendant’s admitted participation in the Lapeer County theft. *Nutt, supra*, ___ Mich at ___. The defendant moved to dismiss the receiving and concealing charge because *White* required the state “to join at one trial all charges arising from a continuous time sequence that demonstrated a single intent and goal.” *Nutt, supra*, ___ Mich at ___.

The Michigan Supreme Court concluded that it had incorrectly construed the meaning of the constitutional phrase “same offense” in its *White* decision because the ratifiers of the 1963 Constitution intended that “same offense” be accorded the meaning given its federal counterpart and that it be interpreted consistently with “state and federal double jeopardy jurisprudence as it then existed.” *Nutt, supra*, ___ Mich at ___. The Court stated that the *White* Court “strayed from [the ratifiers’] intent when it adopted the same transaction test” and explained that the remedy for that error required a “return to the same-elements test, which had been consistently applied in this state until its abrogation . . . in 1973 [footnote omitted].” *Nutt, supra*, ___ Mich at ___.

Michigan’s return to the same-elements test signifies a return to “the well-established method of defining the Fifth Amendment term ‘same offence’”

known as the *Blockburger* test. *Nutt, supra*, ___ Mich at ___; *Blockburger v United States*, 284 US 299, 304 (1932). The *Blockburger* test “focuses on the statutory elements of the offense. If each requires proof of a fact that the other does not, the *Blockburger* test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.” *Nutt, supra*, ___ Mich at ___, quoting *Iannelli v United States*, 420 US 770, 785 n 17 (1975).

The same-elements test, as dictated directly by the *Blockburger* Court, provides:

“The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *Blockburger, supra*, 284 US at 304; *Nutt, supra*, ___ Mich at ___.

As applied to the *Nutt* case, the Court determined that the defendant could properly be tried for the receiving and concealing charge even though she pleaded guilty to the offense from which the stolen property was obtained. *Nutt, supra*, ___ Mich at ___. Because the elements required to convict her for each offense were not identical, the defendant’s protection from double jeopardy was not violated. *Nutt, supra*, ___ Mich at ___. Specifically, the defendant’s conviction for second-degree home invasion required proof that (1) the defendant entered a dwelling by breaking or entered without permission, and (2) the defendant entered with the intent to commit a felony or larceny in the dwelling. *Nutt, supra*, ___ Mich at ___. The defendant’s conviction for receiving and concealing a stolen firearm required proof that (1) the defendant received, concealed, stored, bartered, sold, disposed of, pledged, or accepted as security for a loan, (2) a stolen firearm or stolen ammunition, and (3) the defendant knew that the firearm or ammunition was stolen. *Nutt, supra*, ___ Mich at ___. The Court explained:

“Clearly, there is no identity of elements between these two offenses. Each offense requires proof of elements that the other does not. Because the two offenses are nowise the same offense under either the Fifth Amendment or art 1, § 15, we affirm the result reached by the Court of Appeals majority and hold that defendant is not entitled to the dismissal of the Oakland County charge.” *Nutt, supra*, ___ Mich at ___.

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 7

Pretrial Proceedings in Delinquency Cases

7.8 Evaluating a Juvenile's Competence

Insert the following text on page 164 before Section 7.9:

An unpublished opinion of the Michigan Court of Appeals is not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1). The following unpublished case is provided to assist the bench in an area without published case law.

Judicial Admission of a Mentally Retarded Juvenile. In an unpublished opinion, the Court of Appeals held that the Mental Health Code prohibits judicial admission to a mental health care facility of a mentally retarded juvenile who was determined incompetent to stand trial and whose condition will not improve. In *In re Blackshear*, unpublished opinion per curiam of the Court of Appeals, decided March 30, 2004 (Docket No. 240556, 240665, and 240666), the trial court committed a juvenile who was deemed incompetent to stand trial on the basis of his mental retardation to a Community Mental Health Agency for care, treatment, and supervision. Noting that the Mental Health Code is silent regarding judicial admission of a mentally retarded juvenile who has been found incompetent and whose condition will not improve within 15 months, the trial court followed *In re Carey*, 241 Mich App 222 (2000), by construing the provisions of the Mental Health Code to protect the juvenile's rights. The trial court used MCL 330.2031 as guidance. MCL 330.2031 provides that if a defendant is deemed incompetent to stand trial and the court determines that he or she is unlikely to attain competence with 15 months, the court may direct the prosecuting attorney to file a petition alleging that the defendant is a person requiring treatment as defined by MCL 330.1401 (governing mental illness) or meets the criteria for judicial admission as defined by MCL 330.1515 (governing mental retardation). Pursuant to MCL 330.1515, the trial court judicially admitted the juvenile to a mental health care facility. The Court of Appeals reversed the order because the express language in MCL 330.1515 provides for court admissions of individuals *18 years of age or older*. MCL 330.1503(1) also expressly

prohibits the court from judicially admitting an individual under the age of 18. The Court of Appeals concluded that “the trial court in this case was not allowed to disregard the clear directives of the act and judicially admit the juvenile to mental health care.”

CHAPTER 20

“Automatic Waiver” Proceedings— Arraignments & Preliminary Examinations

20.2 “Automatic Waiver” of Family Division Jurisdiction

Near the top of page 432 after the first four bullets, insert the following bullets:

- a lesser-included offense of any of the above-enumerated offenses if the juvenile is charged with an above-enumerated offense, MCL 712A.2(a)(1)(H), MCL 600.606(2)(h), and MCL 764.1f(2)(h);
- any other violation arising out of the same transaction as any of the above-enumerated offenses if the juvenile is charged with an above-enumerated offense, MCL 712A.2(a)(1)(I), MCL 600.606(2)(i), and MCL 764.1f(2)(i).

Update: Juvenile Traffic Benchbook

CHAPTER 7

Abstracts, Expungement of Records, & Setting Aside Adjudications

7.1 Requirements for Sending Abstract of Court Record to Secretary of State

A. Time Requirements for Violations of the Michigan Vehicle Code and Other Criminal Traffic Offenses

Insert the following language at the bottom of page 7-2:

Effective May 3, 2004, 2004 PA 62 added the following provision to MCL 257.732:

“(5) Beginning September 1, 2004, the clerk of the court shall also forward an abstract of the court record to the secretary of state if a person has plead guilty to, or admitted responsibility as a juvenile for, a violation of . . . MCL 436.1703, or a local ordinance substantially corresponding to that section, and has had further proceedings deferred under that section. If the person is sentenced to a term of probation and terms and conditions of probation are fulfilled and the court discharges the individual and dismisses the proceedings, the court shall also report the dismissal to the secretary of state.”

CHAPTER 8

Procedures for Civil Infractions

8.30 Civil Fines

Replace the second bullet in the October 2003 update to page 8-37 with the following:

- Failure to produce evidence of insurance—not more than \$50.00 plus costs. MCL 257.328.*

*Effective May 1, 2004. 2004 PA 52.

CHAPTER 8

Procedures for Civil Infractions

8.33 Waiving Civil Fines, Court Costs, and Assessments*

Add the following language to the October 2003 update to page 8-39:

- For failing to produce a certificate of insurance—“upon receipt of verification by the court that the person, before the appearance date on the citation, produced valid proof of insurance that was in effect at the time the violation . . . occurred. Insurance obtained subsequent to the time of the violation does not make the person eligible for a waiver under this subsection.” MCL 257.907(16).*

If the court receives verification, before the appearance date on the citation, that the driver possessed valid insurance at the time of the violation, the court *may* waive the fee described under MCL 257.328(3)(c) (a discretionary fee of not more than \$25.00). MCL 257.907(16).

*Section title was amended by October 2003 update.

*Effective May 1, 2004. 2004 PA 52.

CHAPTER 8

Procedures for Civil Infractions

8.38 Points

In the October 2003 update to page 8-43, replace the first paragraph and the quote following it with the following:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a(1) to include points assessed for violations of section 629c* as well as section 320a. As amended, MCL 257.732a(1) provides:

“An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record pursuant to sections 320a and 629c within a 2-year period for any violation not listed under subsection (2) shall be assessed a \$100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under subsection (2), an additional fee of \$50.00 shall be assessed. The secretary of state shall collect the fees described in this subsection once each year that the point total on an individual driving record is 7 points or more.”

Effective May 1, 2004, 2004 PA 52 also added the following provision to MCL 257.732a:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

*MCL 257.629c deals with speeding violations on limited access freeways where the limit is 55 mph or more.

Update: Managing a Trial Under The Controlled Substances Act

CHAPTER 9

Double Jeopardy in Controlled Substance Cases

Note: The Supreme Court decision summarized below will likely affect most of the information found in Chapter 9. The chapter will be updated as part of MJJI's scheduled update of this benchbook in its entirety. Pending those wholesale revisions, the following case summary is provided to alert the reader to this case's expansive impact on existing case law.

The Michigan Supreme Court readopted the “same-elements” test to determine whether the prohibition against double jeopardy is violated when multiple charges are brought against a defendant for conduct related to a single criminal transaction. *People v Nutt*, ___ Mich ___, ___ (2004). In *Nutt*, the Court overruled its decision in *People v White*, 390 Mich 245 (1973), where the Court disapproved of the “same-elements” test in favor of the “same transaction” test as the means of resolving double jeopardy issues. The “same transaction” test generally prohibited serial prosecutions of a defendant for entirely different crimes arising from a single criminal episode or “transaction.” *Nutt, supra*, ___ Mich at ___. Until the *White* decision in 1973, Michigan courts had interpreted the prohibition against double jeopardy as precluding multiple prosecutions of a defendant for crimes involving identical elements. *Nutt, supra*, ___ Mich at ___.

In *Nutt*, the defendant pleaded guilty in a Lapeer County Court of one count of second-degree home invasion. *Nutt, supra*, ___ Mich at ___. Later, the defendant was bound over for trial in Oakland County on the charge of receiving and concealing a stolen firearm—the firearm was obtained in the defendant's admitted participation in the Lapeer County theft. *Nutt, supra*, ___ Mich at ___. The defendant moved to dismiss the receiving and concealing charge because *White* required the state “to join at one trial all charges arising from a continuous time sequence that demonstrated a single intent and goal.” *Nutt, supra*, ___ Mich at ___.

The Michigan Supreme Court concluded that it had incorrectly construed the meaning of the constitutional phrase “same offense” in its *White* decision because the ratifiers of the 1963 Constitution intended that “same offense” be

accorded the meaning given its federal counterpart and that it be interpreted consistently with “state and federal double jeopardy jurisprudence as it then existed.” *Nutt, supra*, ___ Mich at ___. The Court stated that the *White* Court “strayed from [the ratifiers’] intent when it adopted the same transaction test” and explained that the remedy for that error required a “return to the same-elements test, which had been consistently applied in this state until its abrogation . . . in 1973 [footnote omitted].” *Nutt, supra*, ___ Mich at ___.

Michigan’s return to the same-elements test signifies a return to “the well-established method of defining the Fifth Amendment term ‘same offence’” known as the *Blockburger* test. *Nutt, supra*, ___ Mich at ___; *Blockburger v United States*, 284 US 299, 304 (1932). The *Blockburger* test “focuses on the statutory elements of the offense. If each requires proof of a fact that the other does not, the *Blockburger* test is satisfied, notwithstanding a substantial overlap in the proof offered to establish the crimes.” *Nutt, supra*, ___ Mich at ___, quoting *Iannelli v United States*, 420 US 770, 785 n 17 (1975).

The same-elements test, as dictated directly by the *Blockburger* Court, provides:

“The applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.” *Blockburger, supra*, 284 US at 304; *Nutt, supra*, ___ Mich at ___.

As applied to the *Nutt* case, the Court determined that the defendant could properly be tried for the receiving and concealing charge even though she pleaded guilty to the offense from which the stolen property was obtained. *Nutt, supra*, ___ Mich at ___. Because the elements required to convict her for each offense were not identical, the defendant’s protection from double jeopardy was not violated. *Nutt, supra*, ___ Mich at ___. Specifically, the defendant’s conviction for second-degree home invasion required proof that (1) the defendant entered a dwelling by breaking or entered without permission, and (2) the defendant entered with the intent to commit a felony or larceny in the dwelling. *Nutt, supra*, ___ Mich at ___. The defendant’s conviction for receiving and concealing a stolen firearm required proof that (1) the defendant received, concealed, stored, bartered, sold, disposed of, pledged, or accepted as security for a loan, (2) a stolen firearm or stolen ammunition, and (3) the defendant knew that the firearm or ammunition was stolen. *Nutt, supra*, ___ Mich at ___. The Court explained:

“Clearly, there is no identity of elements between these two offenses. Each offense requires proof of elements that the other does not. Because the two offenses are nowise the same offense under either the Fifth Amendment or art 1, § 15, we affirm the result reached by the Court of Appeals majority and hold that defendant is not entitled to the dismissal of the Oakland County charge.” *Nutt, supra*, ___ Mich at ___.

May 2004

Update: Traffic Benchbook— Revised Edition, Volume 1

CHAPTER 1

Required Procedures for Civil Infractions

Part F—Civil Sanctions and Licensing Sanctions

1.34 Civil Fines

Replace the second bullet in the list on page 1-40 (updated in October 2003) with the following:

- Failure to produce evidence of insurance—not more than \$50.00 plus costs. MCL 257.328.*

*Effective May
1, 2004. 2004
PA 52.

CHAPTER 1

Required Procedures for Civil Infractions

Part F—Civil Sanctions and Licensing Sanctions

1.37 Waiving Civil Fines, Court Costs, and Assessments*

*Section title was amended by October 2003 update.

*Effective May 1, 2004. 2004 PA 52.

Add the following language to the October 2003 update to page 1-43:

- For failing to produce a certificate of insurance—“upon receipt of verification by the court that the person, before the appearance date on the citation, produced valid proof of insurance that was in effect at the time the violation . . . occurred. Insurance obtained subsequent to the time of the violation does not make the person eligible for a waiver under this subsection.” MCL 257.907(16).*

If the court receives verification, before the appearance date on the citation, that the driver possessed valid insurance at the time of the violation, the court *may* waive the fee described under MCL 257.328(3)(c) (a discretionary fee of not more than \$25.00). MCL 257.907(16).

CHAPTER 1

Required Procedures for Civil Infractions

Part F—Civil Sanctions and Licensing Sanctions

1.42 Points

In the October 2003 update to page 1-47, replace the first paragraph and the quote following it with the following:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a(1) to include points assessed for violations of section 629c* as well as section 320a. As amended, MCL 257.732a(1) provides:

“An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record pursuant to sections 320a and 629c within a 2-year period for any violation not listed under subsection (2) shall be assessed a \$100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under subsection (2), an additional fee of \$50.00 shall be assessed. The secretary of state shall collect the fees described in this subsection once each year that the point total on an individual driving record is 7 points or more.”

Effective May 1, 2004, 2004 PA 52 also added the following provision to MCL 257.732a:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

*MCL 257.629c deals with speeding violations on limited access freeways where the limit is 55 mph or more.

CHAPTER 2

Civil Infractions

2.19 No Proof of Insurance

C. Civil Sanctions

1. Standard civil sanctions for no proof of insurance

At the bottom of page 2-56, replace the language in #1 with the following:

1. Effective May 1, 2004, 2004 PA 52 provides that the civil fine ordered for a violation of MCL 257.328 shall not be more than \$50.00. MCL 257.907(2).

CHAPTER 2

Civil Infractions

2.19 No Proof of Insurance

C. Civil Sanctions

1. Standard civil sanctions for no proof of insurance

Add the following #4 to the list in the October 2003 update to page 2-57:

4. Subject to MCL 257.732a(8), when an abstract is posted that a person has been found guilty or determined responsible for a violation of MCL 257.328, the Secretary of State shall assess a \$200.00 driver responsibility fee each year for two consecutive years. MCL 257.732a(2)(d).*

Note: MCL 257.732a(8)* provides persons who were assessed a driver responsibility fee after October 1, 2003 and before May 1, 2004 an opportunity to avoid the fee if proof of insurance is presented to the court no later than June 30, 2004. That statute also requires a court to rescind an abstract of the offense:

“(8) Not more than 60 days after the effective date of the amendatory act that added this subsection, if an individual who was issued a citation for a violation of section 328(1) for failing to produce a certificate of insurance from October 1, 2003 until the date the amendatory act that added this subsection takes effect presents a certificate of insurance that was in effect at the time the individual was issued the citation to the court that forwarded the abstract, the court shall rescind the abstract. After the court rescinds the abstract as described in this subsection, the court shall notify the secretary of state, which shall refund, waive, or both refund and waive the driver responsibility fee corresponding to the violation, as appropriate.”

*Effective May 1, 2004. 2004 PA 52.

*Effective May 1, 2004. 2004 PA 52.

CHAPTER 2

Civil Infractions

2.19 No Proof of Insurance

C. Civil Sanctions

2. Special civil sanction provisions for no proof of insurance

Insert the following immediately after subheading (C)(2) on page 2-57:

Effective May 1, 2004, 2004 PA 52 added the following provision to MCL 257.328:

“(3) If, before the appearance date on the citation, the person submits proof to the court that the motor vehicle had insurance meeting the requirements of . . . the insurance code . . . at the time the violation . . . occurred, all of the following apply:

“(a) The court shall not assess a fine or costs.

“(b) The court shall not cause an abstract of the court record to be forwarded to the secretary of state.

“(c) The court may assess a fee of not more than \$25.00, which shall be paid to the court funding unit.”

Note: The addition of MCL 257.328(3), above, changed the numbering of former MCL 257.328(3), discussed in the remaining paragraphs of subsection (C)(2), to MCL 257.328(4).

CHAPTER 2

Civil Infractions

2.19 No Proof of Insurance

D. Licensing Sanctions

Replace the list on page 2-57 with the following:

1. No points are entered on a driver's record for a violation of MCL 257.328. MCL 257.328(7).
2. If suspension of the driver's license is ordered by the court, it shall be for a period of 30 days (to begin the date the driver is determined to be responsible for the civil infraction) or until proof of insurance is submitted to the Secretary of State along with a \$25.00 service fee, whichever occurs later. MCL 257.328(4).
3. If, before the appearance date on the citation, the driver submits proof to the court that the motor vehicle was properly insured at the time the citation was issued, "the court shall not submit, and the secretary of state shall discard and not enter on the master driving record, an abstract for a conviction or civil infraction determination" for a violation of MCL 257.328(1). MCL 257.732(15)(f).*

*Effective May
1, 2004. 2004
PA 52.

CHAPTER 3

Misdemeanor Traffic Offenses

Part A—Introduction

*Renumbered
by October
2003 update.

3.8* Points

In the October 2003 update to page 3-6, replace the first paragraph and the quote following it with the following:

*MCL
257.629c deals
with speeding
violations on
limited access
freeways where
the limit is 55
mph or more.

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a(1) to include points assessed for violations of section 629c* as well as section 320a. As amended, MCL 257.732a(1) provides:

“An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record pursuant to sections 320a and 629c within a 2-year period for any violation not listed under subsection (2) shall be assessed a \$100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under subsection (2), an additional fee of \$50.00 shall be assessed. The secretary of state shall collect the fees described in this subsection once each year that the point total on an individual driving record is 7 points or more.”

Effective May 1, 2004, 2004 PA 52 also added the following provision to MCL 257.732a:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

CHAPTER 3

Misdemeanor Traffic Offenses

Part B—Misdemeanors Involving Accidents

3.15* Leaving the Scene of an Accident Resulting in Personal Injury

*Renumbered
by October
2003 update.

D. Licensing Sanctions

Add the following to the text in the October 2003 update to page 3-15:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

CHAPTER 3

Misdemeanor Traffic Offenses

Part B—Misdemeanors Involving Accidents

*Renumbered
by October
2003 update.

3.16* Leaving the Scene of an Accident Resulting in Vehicle Damage Only

C. Criminal Penalties

Add the following to the text in the October 2003 update to page 3-17:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

CHAPTER 3

Misdemeanor Traffic Offenses

Part B—Misdemeanors Involving Accidents

3.16* Leaving the Scene of an Accident with an Attended or Unattended Vehicle

*Renumbered
by October
2003 update.

D. Licensing Sanctions

Add the following to the text in the October 2003 update to page 3-15:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

CHAPTER 3

Misdemeanor Traffic Offenses

Part C—License and Permit Violations

*Renumbered
by October
2003 update.

3.21* Driving With an Invalid License

D. Licensing Sanctions

Add the following to the text in the October 2003 update to page 3-22:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

CHAPTER 3

Misdemeanor Traffic Offenses

Part D—Title, Plate, Registration, and Insurance Violations

3.32* Producing False Evidence of Motor Vehicle Insurance

*Renumbered by October 2003 update.

D. Licensing Sanctions

Replace the language in the October 2003 update to page 3-37 with the following:

Subject to MCL 257.732a(8), when an abstract is posted that a person has been found guilty or determined responsible for a violation of MCL 257.328, the Secretary of State shall assess a \$200.00 driver responsibility fee each year for two consecutive years. MCL 257.732a(2)(d).*

*Effective May 1, 2004. 2004 PA 52.

Note: MCL 257.732a(8)* provides persons who were assessed a driver responsibility fee after October 1, 2003 and before May 1, 2004 an opportunity to avoid the fee if proof of insurance is presented to the court no later than June 30, 2004. That statute also requires a court to rescind an abstract of the offense:

*Effective May 1, 2004. 2004 PA 52.

“(8) Not more than 60 days after the effective date of the amendatory act that added this subsection, if an individual who was issued a citation for a violation of section 328(1) for failing to produce a certificate of insurance from October 1, 2003 until the date the amendatory act that added this subsection takes effect presents a certificate of insurance that was in effect at the time the individual was issued the citation to the court that forwarded the abstract, the court shall rescind the abstract. After the court rescinds the abstract as described in this subsection, the court shall notify the secretary of state, which shall refund, waive, or both refund and waive the driver responsibility fee corresponding to the violation, as appropriate.”

2004 PA 52* also added the following provision to MCL 257.732a:

*Effective May 1, 2004.

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law

of this state, or of a law of another state substantially corresponding to a law of this state.”

CHAPTER 3

Misdemeanor Traffic Offenses

Part E—Other Misdemeanors Found in the Michigan Vehicle Code

3.46* Reckless Driving

D. Licensing Sanctions

Add the following to the text in the October 2003 update to page 3-58:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

*Renumbered
by October
2003 update.

CHAPTER 4

Off Road Vehicles

Part B—Traffic Offenses in the ORV Act

4.17 Operation of ORVs While Intoxicated or Impaired

B. Operating an ORV While Under the Influence of an Intoxicating Liquor or Controlled Substance

Add the following to the text in the October 2003 update to page 4-26:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

Update: Traffic Benchbook— Revised Edition, Volume 2

CHAPTER 2

Procedures in Drunk Driving and DWLS Cases

2.6 Arraignment/Pretrial Procedures

B. Holding or Releasing a Defendant Prior to Arraignment

Replace the last bullet in the list near the bottom of page 2-32 with the following:

- OWPD (operating with the presence of drugs) under Vehicle Code §625(8).*
- Violation of a local ordinance substantially corresponding to Vehicle Code §625(1), (3), (6), or (8).*

*Effective May 3, 2004. 2004 PA 62.

*2004 PA 62.

2.6 Arraignment/Pretrial Procedures

C. Time Requirements for Processing Misdemeanor Drunk Driving Cases

Replace the last bullet of the first bulleted list on page 2-33 with the following:

- OWPD (operating with the presence of drugs) under Vehicle Code §625(8).*
- Violation of a local ordinance substantially corresponding to Vehicle Code §625(1), (3), (6), (8), or §625m.*

*Effective May 3, 2004. 2004 PA 62.

*2004 PA 62.

Add the following bullet to the second bulleted list on page 2-33:

- OWPD (operating with the presence of drugs) under Vehicle Code §625(8).*

*Effective May 3, 2004. 2004 PA 62.

2.6 Arraignment/Pretrial Procedures

E. Guilty and Nolo Contendere Pleas

1. Prerequisites for Accepting a Plea—Advice to the Defendant

Replace the first sentence of the second paragraph on page 2-35 with the following:

For guilty or nolo contendere pleas arising under Vehicle Code §625 or a local ordinance substantially corresponding to Vehicle Code §625(1), (2), (3), (6), or (8), MCL 257.625b(4) also provides that the court must advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation.* (MCR 6.610(E)(3)(a) and 6.302(B)(2) contain a similar requirement.)

*Effective May 3, 2004. 2004 PA 62.

2.9 General Sentencing Considerations for §625 and §904 Offenses

C. Alcohol Assessment and Counseling in Drunk Driving Cases

Add the following bullet to the list at the bottom of page 2-49:

- OWPD (operating with the presence of drugs) under §625(8) or a substantially corresponding local ordinance.*

*Effective May
3, 2004. 2004
PA 62.

*Renumbered
from 2.13 by
October 2003
update.

2.14* Failures to Appear in Court or to Comply with a Judgment

B. License Suspension

1. Drunk Driving and Alcohol-Related Offenses

Replace the first bulleted list on page 2-75 with the following:

- OUIL/OUID/UBAC under Vehicle Code §625(1), or a local ordinance substantially corresponding to this section.
- Permitting a person under the influence of alcohol or drugs to operate a motor vehicle, causing death or serious impairment of a body function under Vehicle Code §625(2), or a local ordinance substantially corresponding to this section.
- OWI, under Vehicle Code §625(3), or a local ordinance substantially corresponding to this section.
- Zero tolerance violations under Vehicle Code §625(6), or a local ordinance substantially corresponding to this section.
- OWPD under Vehicle Code §625(8),* or a local ordinance substantially corresponding to this section.

*Effective May
3, 2004. 2004
PA 62.

CHAPTER 3

Section 625 Offenses

Chapter 3 was replaced in its entirety by the September 2003 update. Additional content concerning the driver responsibility fee was added to Chapter 3 by the October 2003 update. The following updates to Chapter 3 refer to the section and subsection designations as they appear in the October 2003 updates.

3.1 OUIL/OUID/UBAC — §625(1)

C. Criminal Penalties and Other Sanctions for Violations of §625(1)

1. First-time Offenders

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

2. Offenders Who Violate §625(1) Within Seven Years of a Prior Conviction

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3. Offenders Who Violate §625(1) Within Ten Years of Two or More Prior Convictions

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3.3 Operating While Visibly Impaired (OWI) — §625(3)

B. Penalties for OWI

1. First-time Offenders

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

2. Repeat Offenders — Violation Within Seven Years of One Prior Conviction

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3. Repeat Offenders — Violation Within Ten Years of Two or More Prior Convictions

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3.4 OUIL/OUID/UBAC/OWI/OWPD Causing Death of Another — §625(4)

B. Penalties for the Offense

2. Licensing and Vehicle Sanctions for First-time Offenders

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3. Licensing and Vehicle Sanctions for Repeat Offenders

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3.5 OUIL/OUID/UBAC/OWI/OWPD Causing Serious Impairment of a Body Function — §625(5)

B. Penalties

2. Licensing and Vehicle Sanctions for First-time Offenders

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3. Licensing and Vehicle Sanctions for Repeat Offenders

Add the following paragraph to the text under **Licensing Sanctions**:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3.6 “Zero Tolerance” Violations — §625(6)

B. Penalties

2. Licensing Sanctions

Insert the following paragraph after the text in the October 2003 update:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3.7 Child Endangerment — §625(7)

B. Penalties for Violation of §625(7)

2. Licensing Sanctions

Insert the following language after the text in the October 2003 update:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3.8 Operating With the Presence of Drugs (OWPD)— §625(8)

B. Penalties for Violations of §625(8)

1. First-time Offenders

Insert the following language after the text in the October 2003 update:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

2. Offenders Who Violate §625(8) Within Seven Years of a Prior Conviction

Insert the following language after the text in the October 2003 update:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

3. Offenders Who Violate §625(1) Within Ten Years of Two or More Prior Convictions

Insert the following language after the text in the October 2003 update:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

CHAPTER 4

Section 904 Offenses

4.1 Driving While One's License Is Suspended or Revoked — §904(1) and (2)

C. Penalties

2. License Sanctions

Insert the following language after the October 2003 update to page 4-4:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

4.2 Driving While License Suspended or Revoked Causing Death — §904(4)

B. Penalties and Sanctions

2. Licensing Sanctions

Insert the following language after the October 2003 update to page 4-6:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

4.3 Driving While License Suspended or Revoked Causing Serious Impairment of a Body Function — §904(5)

B. Penalties and Sanctions

2. Licensing Sanctions

Insert the following language after the October 2003 update to page 4-8:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

4.4 Allowing a Suspended/Revoked Driver to Operate Causing Death or Serious Impairment of a Body Function — §904(7)

B. Penalties

Insert the following language after the October 2003 update to page 4-10:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

4.5 Moving Violations Committed During a Period of Suspension/Revocation

Insert the following language after the October 2003 update to page 4-10:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

6.4 Licensing Sanctions for Felony Traffic Offenses

A. Points

In the October 2003 update to page 6-4, replace the first paragraph and the quote following it with the following:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a(1) to include points assessed for violations of section 629c* as well as section 320a. As amended, MCL 257.732a(1) provides:

“An individual, whether licensed or not, who accumulates 7 or more points on his or her driving record pursuant to sections 320a and 629c within a 2-year period for any violation not listed under subsection (2) shall be assessed a \$100.00 driver responsibility fee. For each additional point accumulated above 7 points not listed under subsection (2), an additional fee of \$50.00 shall be assessed. The secretary of state shall collect the fees described in this subsection once each year that the point total on an individual driving record is 7 points or more.”

Effective May 1, 2004, 2004 PA 52 also added the following provision to MCL 257.732a:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

*MCL 257.629c deals with speeding violations on limited access freeways where the limit is 55 mph or more.

CHAPTER 7

Felony Offenses in the Michigan Vehicle Code

7.4 Failing to Stop at Signal of Police Officer (“Fleeing and Eluding”)

D. Licensing Sanctions

Insert the following language after the October 2003 update to page 7-11:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

7.8 Leaving the Scene of an Accident Resulting in Serious or Aggravated Personal Injury or Death

D. Licensing Sanctions

Insert the following language after the October 2003 update to page 7-18:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

CHAPTER 8

Felony Offenses in the Michigan Penal Code

8.1 Involuntary Manslaughter with a Motor Vehicle

D. Licensing Sanctions

Insert the following language after the October 2003 update to page 8-2:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”

CHAPTER 9

Two Year Misdemeanors in the Michigan Penal Code

9.2 Negligent Homicide with a Motor Vehicle

D. Licensing Sanctions

Insert the following language after the October 2003 update to page 9-5:

Effective May 1, 2004, 2004 PA 52 amended MCL 257.732a to provide:

“(7) A driver responsibility fee shall be assessed under this section in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law of this state, of a local ordinance substantially corresponding to a law of this state, or of a law of another state substantially corresponding to a law of this state.”